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LAW OFFICES  
**HALEY BADER & POTTS P.L.C.**  
4350 NORTH FAIRFAX DR., SUITE 900  
ARLINGTON, VIRGINIA 22203-1633  
TELEPHONE (703) 841-0606  
FAX (703) 841-2345  
E-MAIL: haleybp@haleybp.com

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

THEODORE D. KRAMER  
ADMITTED IN VA AND DC  
E-mail: tkramer@haleybp.com

OUR FILE NO.  
0715-100-63

August 7, 1997

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Comments In MM Docket No. 97-138

Dear Mr. Caton:

On behalf of Capstar Broadcasting Partners, Inc., I am transmitting an original and nine copies of its Comments in MM Docket No. 97-138, Review Of The Commission's Rules Regarding The Main Studio And Local Public Inspection Files Of Broadcast Television And Radio Stations.

Please contact this office directly if there are any questions concerning this matter.

Sincerely yours,

  
Theodore D. Kramer

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Enclosures

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

In The Matter Of )  
 )  
Review of the Commission's Rules ) MM Docket No. 97-138  
regarding the main studio and )  
local public inspection files of )  
broadcast television and radio stations )

To: The Commission

**COMMENTS OF CAPSTAR BROADCASTING PARTNERS, INC.**

John Wells King  
Theodore D. Kramer  
Rafael Prohias

Its attorneys

HALEY BADER & POTTS P.L.C.  
Suite 900  
4350 North Fairfax Drive  
Arlington, VA 22203-1633  
703/841-0606

August 7, 1997

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## SUMMARY

Capstar Broadcasting Partners, Inc. ("Capstar") supports the Commission's effort to remove obstacles to operating efficiency posed by the current main studio and public inspection file rules. While the relaxation of the main studio rule would represent a major stride in achieving the Commission's goal, Capstar believes that the better alternative would be the complete elimination of the main studio rule.

The original purpose of the main studio rule, to facilitate the production of programs of special interest to a particular community, has long since been rendered obsolete by current technology. The currently articulated objectives of the rule, to promote access to station management, to enable monitoring of a station's public interest performance, and to encourage a dialogue between a station and its community, are all satisfied by other Commission rules and policies as well as market forces.

If the Commission determines to relax rather than eliminate the main studio rule, however, Capstar supports a revision which permits a licensee to locate its main studio at a location within the principal

community contour of any station licensed to the same community or within a 44 mile radius of the center of its community of license.

Capstar also supports the Commission's proposal to permit a station's public inspection file to be maintained at the station's main studio, whether or not it is located within the boundaries of the community of license.

Finally, most of the Commission's proposals to streamline the public file rule by reducing the number of documents required to be maintained in a station's public inspection file should be adopted. In addition, the Commission should clarify the retention requirements for certain types of documents, such as documents of former station licensees that the current licensee must keep.

Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

In The Matter Of	)	
	)	
Review of the Commission's Rules	)	MM Docket No. 97-138
regarding the main studio and	)	
local public inspection files of	)	
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**To: The Commission**

## Comments

[R]egulation should be kept relevant to a technology and an industry that has been characterized from its beginning by rapid and dynamic change.

-- *Deregulation Of Radio*, 84 FCC2d 968, 969 (1981).

Capstar Broadcasting Partners, Inc. ("Capstar"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, herewith submits its comments in the above-captioned proceeding, by stating as follows:

## I. Introduction

By *Notice of Proposed Rule Making* released May 28, 1997, FCC 97-182 ("Notice"), the Commission invited comment on several proposals to relax the broadcast main studio and local public inspection file rules. Capstar is pleased to respond to the Commission's call for comments. Capstar is the owner of several subsidiary companies which hold the licenses for approximately 150 broadcast stations in over 85 communities. In many of its markets, Capstar holds licenses for three or more broadcast stations. Consequently, Capstar is directly affected by

the current obstacles to operating efficiency caused by the main studio and public inspection file rules as presently in effect. It believes its experience and views can be of assistance to the Commission in formulating changes in agency rules and policy in this area.

## *II. Repeal Of The Main Studio Rule Is The Wisest Course*

The main studio rule, in light of today's technology and the dynamic state of the broadcast industry, is an anachronism ripe for repeal. It should be eliminated. It no longer serves a valid regulatory objective, but instead only burdens licensees and diverts limited agency resources. The objectives the main studio rule was designed to meet when adopted decades ago can be and are being met by other rules and policies. Repeal of the rule will not frustrate those objectives.

### *A. Repeal Of The Main Studio Rule Is Timely*

The Commission is to be applauded for initiating a reexamination of the main studio rule at this critical time in the evolution of the broadcast industry. Since the rule was last visited some ten years ago,<sup>1</sup> sweeping changes have occurred in the broadcast industry, driven principally by the integration of the personal computer into broadcast station operations, satellite delivered programming and the ownership

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<sup>1</sup> *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations,*  
Footnote continued on next page.



consolidation stimulated by passage of the Telecommunications Act of 1996.

Yet even in 1986, the Commission was prepared to, and did, consider outright elimination of the main studio rule.<sup>2</sup> It then observed that the rule was originally adopted:<sup>3</sup>

. . . because it was believed that station operations in the public interest would be furthered by a governmentally mandated requirement that a station's main studio be accessible to residents of the community of license. We now believe that this rationale, as a practical matter, may no longer be valid. . . . [W]e do not see a causal relationship between the main studio rules and the provision of service to the community of license which is sufficient to warrant their retention.

The Commission's tentative conclusion rested upon the considered judgment of the Mass Media Bureau that the accessibility of the main studio did not appear any longer to facilitate interaction between a station and the residents of its service area.<sup>4</sup>

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2 FCC Rcd 3215, 3217 (1987) ("Main Studio I"), *reconsideration granted in part*, 3 FCC Rcd 5024, 5026 (1988) ("Main Studio II").

<sup>2</sup> *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations (Notice of Proposed Rule Making)*, 1 FCC Rcd 536 (1986) ("1986 Notice").

<sup>3</sup> *Id.*, at 537.

<sup>4</sup> "[I]t appears more likely that local residents would phone rather than visit the station to register any complaints about programming or [to] suggest programming to meet needs and issues of concern in the community." *Report on the Status of the AM Broadcast Rules*, RM-5532, released April 3, 1986 (M.M.Bur.), at 40, quoted in 1986 Notice, *supra* at 537.

Ultimately, expressing the sentiment that “it is appropriate to proceed prudently,” the Commission opted to relax the main studio rule rather than to eliminate it.<sup>5</sup> In the ten years since the rule was relaxed, the rationale for repeal of the rule has gained increased significance. Elimination is now appropriate.

### *B. The Purpose Of The Main Studio Rule*

The Notice recites that the purposes of the main studio rule are to (a) promote reasonable access to station management, to (b) enable monitoring of a station’s public interest performance, and (c) encourage a continuing dialogue between a station and its community. The result, the Notice reasons, is a station better integrated into the community, and which is more responsive to local community needs. Notice at 2.

These were not the original purposes of the main studio rule. The main studio rule springs from the “radio service” mandate of Section 307(b) of the Communications Act of 1934, as amended. Nearly a half century ago, the Commission articulated that such service includes the opportunity “for the development and expression of local interests, ideas, and talents and for the production of radio programs of special interest to a particular community.”<sup>6</sup> The rule was thus grounded in technology,

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<sup>5</sup> *Main Studio I, supra* at 3218.

<sup>6</sup> *Promulgation of Rules and Regulations Concerning the origination point of programs of Standard and FM Broadcast Stations*, 43 FCC 570, 571 (1950).

5.

and in the technological assumption that a main studio is a necessary element of providing a local radio service.

The historical purpose of the main studio rule, to require a place for program production, has long since been outpaced by technological advances, as the Commission recognized ten years ago.<sup>7</sup>

The definition of a main studio<sup>8</sup> ignores the reality of current broadcasting practices. Although a licensee is no longer required to

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<sup>7</sup> "[T]he role played by the main studio in the production of programming has diminished. . . . [C]overage of local issues does not necessarily have to come from locally produced programming." *Main Studio I*, at 3218.

<sup>8</sup> A main studio must have "production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence". *Main Studio II at 5026*. See also, *Jones Eastern of the Outer Banks*, 6 FCC Rcd 3615 (1991), where the Commission clarified that "meaningful management and staff presence" must include at a minimum a full-time managerial and full-time staff person.

6.

originate programming at its main studio<sup>9</sup>, it must, nevertheless, maintain program origination and transmission capability at that location. These conflicting positions are difficult to rationalize in light of the available technology today which permits a broadcaster to originate programming from virtually any remote location when the need arises. The requirement to retain expensive program origination and transmission equipment at a fixed location which may never be used should be eliminated.

*C. The Current Objectives Of The Main Studio Rule  
Are Met By Other Rules And Policies*

The objectives of the main studio rule, as articulated in the Notice, are sufficiently covered by other Commission rules and policies.

*1. Promote Reasonable Access To Station Management*

Access to a station is desirable because it presumes the facilitation of information exchange. The local public file rule has long fulfilled the function of promoting information flow. It obligates the licensee not only to make information available to the public about the ownership and operation of the station, but it also highlights the significance of communications from the public to the station by imposing a retention requirement on such letters.

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<sup>9</sup> *Main Studio I* at 3219.

Further, as the Commission noted in *Main Studio I*, community residents generally communicate with a station by telephone or mail.<sup>10</sup> Moreover, the past decade has witnessed the growth of private access to the Internet, and emergence of the World Wide Web. This resource has, in a very short period of time, become a major access force in the broadcasting industry.

## *2. Enable Monitoring Of A Station's Public Interest Performance*

Capstar doubts whether the existence of a main studio, *ipso facto*, enables monitoring of a station's public interest performance, but regardless, a station's broadcast signal, from wherever originated, is the obvious primary source for such monitoring. Apart from a station's signal, its local public file is the repository of public interest performance documentation. The Commission's public inspection file rule is entirely adequate to fulfill the monitoring function.

A main studio is not required to provide access to a station's public inspection file. The public file rule itself requires that file to be located apart from the main studio where the main studio is located outside of the community of license.<sup>11</sup> In those circumstances, no station personnel are required to be available to the public inspecting the public file.

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<sup>10</sup> *Id.* at 3218.

<sup>11</sup> 47 C.F.R. §3526(d).

### *3. Encourage Continuing Dialogue Between Station And Community*

Capstar believes that the timeless use of the mails, the usual and routine resort to the telephone, and the increasing popularity of the Internet and websites,<sup>12</sup> provide plentiful encouragement of a continuing dialogue between a station and its community. This is, of course, quite apart from and in disregard of the fact that, as an essentially local business, a broadcast station deploys its personnel into the community on a daily basis. In such routine commerce, whether it is in the programming, sales, or public service realm, the broadcaster is in constant contact with its community. Therefore, repeal of the main studio rule will not frustrate the stated objectives of the rule; they are and will continue to be well met by other policies and rules, and, in the end, by the demands of the business of broadcasting.

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<sup>12</sup> As of July 1, 1997, there were over 2,500 websites of U.S. radio stations on the Internet. See, <http://wmbr.mit.edu/stations/list.html>.

*D. Repeal Will Reduce Administrative Burdens*

No matter how flexible a relaxed rule may be, situations always will arise which could not have been anticipated and which may be a reasonable basis for a waiver request. Waiver requests impose an administrative burden on the Commission staff to adopt a waiver standard and to evaluate waiver requests. Waivers also impose a real cost on broadcasters in terms of delay while waiting for the waiver request to be processed and the cost of marshaling and presenting the facts to the Commission as justification for the waiver.

In 1981 the Commission determined to rely on marketplace forces and to entrust to the reasonable judgment of licensees how they should best satisfy their obligations to program to meet the needs and interests of the communities.<sup>13</sup> There is no reason to expect that the marketplace will not force individual broadcasters to create a presence in a community.

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<sup>13</sup> *Deregulation of Radio*, 84 FCC2d 968, 979 (1981).

### *III. The Main Studio Rule Should Be Modified If Not Repealed*

Although Capstar firmly believes that the public interest would be best served by completely eliminating the main studio rule, the Commission's proposal to modify the rule to give broadcasters more flexibility is a major step in the right direction. Comments were sought on a number of different options to determine where a station must locate its main studio. These include locating the main studio: (a) at any point within the principal community contour of any station licensed to the community of license in question; (b) at some point within a radius of a set number of miles from a common reference point in the community of license, such as city center coordinates; and (c) some combination of (a) and (b).<sup>14</sup> The proposal to locate the main studio in a manner "reasonably accessible to residents of the station's community of license" was rejected as being too vague and carrying the possibility that it would generate numerous disputes which would have to be resolved by the Commission on an individual basis.<sup>15</sup>

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<sup>14</sup> Notice at paras. 14-15.

<sup>15</sup> Notice at para. 12.



A. Broadcasters Should Be Given Greater Flexibility

*In Locating Their Main Studios*

If the Commission does not repeal the main studio rule, then Capstar urges the Commission to modify it to permit the main studio to be located at any point within the principal city contour of any station licensed to the community or within a radius of 44 miles from the reference point of the center of the community of license. This combination of standards provides broadcasters with flexibility, establishes a clear and easily verified method of measurement, and avoids disparities which can arise because different communities have different numbers and classes of stations allocated to them.

*(1) A Contour Standard Alone Is Inadequate*

Using a standard based solely on the principal community contours of the stations licensed to a community raises some potential problems. It may be difficult to ascertain the principal city contours of each station licensed to a community. While this information theoretically is available in the Commission's files, experience suggests that locating this information is often time consuming. Alternatively, the predicted principal city contours of each station could be calculated by a consulting engineer, a process which is complicated by the fact that many stations have been licensed based on calculation methodologies alternative to those specified in the Commission's Rules.

The contour method does not take into account the fact that stations periodically modify their facilities. If a station's main studio location was established on the basis of principal city contours as they existed on a particular date, its location could be out of compliance at a later date if one station in the market relocated its principal city contour. Arguably, this problem could be solved by grandfathering the location of a main studio based upon circumstances extant when the main studio was established.<sup>16</sup> Nevertheless, it could create disparities for stations seeking to establish a new main studio location at a later date.

As not all communities have the same number or classes of stations allocated to them, competitive disadvantages will arise. For example, where stations licensed to nearby communities compete for audience and revenues in both communities, stations licensed to the community with class C radio stations would benefit over their competitors in the neighboring community with only class A stations. It is possible that a station located in the class C community could locate its main studio in the class A community, but the station in the class A community could not locate in the class C community. Even if both stations were in the

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<sup>16</sup> If a main studio location were grandfathered based upon the principal city contours of stations in the community as of a given date, proving compliance several years after the fact could be difficult since there would be no Commission record containing in one place all of the contours at any given dated.

same class the station licensed to the class C community would have disproportionate flexibility in locating its main studio.

*(2) A Fixed Mileage Standard Alone Is Inflexible*

The use of a fixed mileage radius from the reference point of the center of the community of license could result in loss of flexibility for some stations. For example, even using the 42 mile average radius for a maximum facility class C radio station, such a station might be precluded from locating its main studio at points otherwise within its principal city contour, depending upon the distance of the transmitter from the reference point. Typically, station transmitters, particularly for class C stations, are not located at or near the reference point of the center of a community because of the difficulty of locating a suitable site at such locations.

*(3) A Combination Contour And Fixed Mileage Standard can Better Reflect Market Realities*

A rule which permits a broadcaster to locate its main studio at any point either within the principal city contour of any station licensed to its community of license or within a 44 mile radius of the reference point of the center of its community of license minimizes most of the problems with using either standard separately. The 44 mile radius closely approximates the radius of the city grade contour of a maximum facility class C radio station as well as the radius of the maximum facility

television station.<sup>17</sup> Since the principal city contour of AM stations vary depending upon frequency, power, radiation and ground conductivity, AM stations with a principal city contour exceeding the 44 mile radius will not be disadvantaged because they can still locate their main studios within the principal city contour of any station licensed to their community.

The combination method also addresses more realistically the market definition which the Commission uses for determining compliance with the local ownership rule. The definition of a market for purposes of that rule relies solely on the overlapping principal city contours of the stations having common ownership or control.<sup>18</sup> The community of license of such stations is not a factor in defining the market. In many instances, owners of multiple stations in a market cannot collocate the main studios for all of their stations in the market because of the limitations of the present main studio rule. As a result, many of the economies of common ownership, which the Commission acknowledges,<sup>19</sup> are not available.<sup>20</sup> Using the combination method to

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<sup>17</sup> Notice at note 19.

<sup>18</sup> 47 U.S.C. §73.3555(a)(4)(ii).

<sup>19</sup> Notice at para. 8.

<sup>20</sup> In many situations where Capstar must maintain multiple main studios in markets where it would prefer to collocate the studios of its owned or controlled stations, it must incur additional expenses for studio rent, personnel, equipment, utilities, insurance, maintenance and repair, even if it transacts no business and originates no programming at these extra main studios.

expand the area in which to locate the main studio in some instances will permit owners of multiple stations licensed to different communities in a market to increase their ability to collocate main studios and realize additional efficiencies.

#### *IV. Public Inspection File*

##### *A. Location of the Local Public Inspection File*

Section 73.3526 of the Commission's Rules requires that a broadcast station maintain its local public inspection file within its community of license — either at the station's main studio if located in the community of license, or at any accessible place in the community of license if the main studio is located outside the station's community of license.<sup>21</sup>

The Commission proposes to amend the public file rule by allowing broadcast licensees to maintain the local public inspection file at the station's main studio, wherever located.<sup>22</sup> The Commission states that this proposal, along with the above-referenced relaxation of the main studio rule, would ease the regulatory and administrative burdens attendant to the maintenance of the local public inspection file, while

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<sup>21</sup> See 47 C.F.R. § 73.3526(d) (1997). In its Notice, the Commission seeks comments on the public file rule for both commercial and non-commercial stations. Capstar confines its comments herein only to commercial stations.

<sup>22</sup> Notice at para. 20.

ensuring reasonable access of the file to the local community. In addition, the Commission concludes that its proposal would allow licensees to achieve economies of scale, and channel valuable financial and human resources in ways that would better serve the local community.

*(1) The Public File Should Be Kept At The Main Studio  
Wherever Located*

Capstar supports the Commission's forward-thinking proposal to relax its main studio rule, and its concept of streamlining operation of same-market, multiple-stations via a centrally-located studio/business office.<sup>23</sup> Location of a station's local public inspection file at its main studio — regardless of location — would also eliminate the significant regulatory and administrative burdens currently imposed upon commonly-owned same-market stations. Broadcasters owning stations with different communities of license that are located within the same market would benefit greatly because the current regulations require that they maintain a separate local public inspection file in each community if the main studio is located outside of the community. The

<sup>23</sup> If the Commission adopts Capstar's proposal to eliminate the main studio rule, the Commission could, nevertheless, require a station to maintain its public files at the location which the licensee deems to be its primary place of business in the market. Knowledge of this location would be as readily available to the public as the location of the "main studio" by requiring that a licensee list the address of its primary place of business in the market in the telephone directory of its community of license. In the comments which follow, Capstar's reference to main studio is meant to encompass a licensee's primary place of business in its market if the Commission eliminates the main studio rule.

proposed relaxation of the local public file requirements would effectuate the same economies of scale that can, and have been, achieved through common ownership of stations — economies of scale that Congress found to be in the public interest when it enacted the Telecommunications Act of 1996.<sup>24</sup>

The current rule, requiring the public file to be located in the community of license if the main studio is located outside that community, creates confusion both for the public and station employees. In Capstar's experience, on those few occasions when members of the public have sought to inspect the public file of a station whose main studio is located outside the community of license, the first place they go is the main studio. Then they are informed that the public file is located at a completely different site within the community of license. In many cases, therefore, Capstar has taken upon itself to maintain *two* local public files — one courtesy copy at the station's main studio, and the original, "official", local public inspection file maintained at an alternate location pursuant to the Commission's rules. Clearly, this practice results in administrative redundancy as well as the waste of valuable financial and human resources at affected stations. It also creates unnecessary confusion among station personnel, and could potentially

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<sup>24</sup> Notice at para. 8.

result in the maintenance of two local public files with neither file containing the required documents.

The Commission's proposal also would take a station's local public inspection file — housed apart from a main studio located outside the community of license — out of the hands of often disinterested third parties, where availability and oversight of the file are easily compromised. In this regard, small-market licensees are most likely to benefit from the Commission's proposal. In rural broadcast communities, a station's local public file is often kept at locations such as libraries and town halls. These establishments often are not consistently open for business during "regular" business hours. Sole practitioner attorneys and/or real estate offices — where local public files in smaller communities also are often maintained — cannot provide consistent, on-demand public access to the local public file during "regular" business hours, as their offices are closed for lunch or business appointments. As a result, smaller broadcasters have resorted to storing their stations' local public files in such absurd locations as barber shops, marine supply stores, a violin repair shop and local convenience stores.

Additionally, allowing licensees to locate the station's local public file at the main studio allows direct supervision by station staff who are more familiar with the file and its contents, better versed in the Commission's requirements for providing reasonable access to the



public, and accountable to the licensee for their performance. For example, while local libraries may appear to be a logical and viable alternative to a station's main studio as a repository for the local public file, many librarians and other reference personnel often treat the local public file as "just another government document," and require prior authorization before allowing interested parties to inspect the file.

Direct station supervision of the local public file also substantially reduces the potential for the file and its contents from being lost, misplaced, mishandled and/or out-dated. Finally, station staff are better equipped — than librarians, real estate agents, barbers and convenience store clerks — to respond to inquiries made by the public in connection with the file and its contents, as well as overall station operation.

### *B. Contents of the Local Public Inspection File.*

#### *(1) Elimination Of Unnecessary Documents*

The local public inspection file must contain exhaustive information regarding the station, including ownership reports, employment reports, and issues-program lists.<sup>25</sup> The Commission proposes to eliminate and revise certain aspects of the rules that are out-dated or require clarification. For example, the Commission intends to eliminate the requirement to keep the out-dated 1974 manual, "The Public and Broadcasting," and reports filed pursuant to the repealed

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<sup>25</sup> 47 C.F.R. §§ 73.3526(a) (1997).